IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FOURTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 10560 of 2004

Between:

1 M/s Tolido Network Business Systems Pvt. Ltd, Rep. by its Managing Director, Sri P.V.L. Koteshwara Rao, S/o Late Sri P. Balaratnam, Jawaharnagar, Chikkadpally, Hyderabad.
2 M/s Cantos Marketing Private Limited, rep.by its C.E.O. Sri P.V.L. Koteshwara Rao, 3-4-809 & 809A, IInd Floor, Opp: State Bank of India, Barakatpura, Hyderabad - 500027.

..... PETITIONERS.

AND

1 State of Andhra Pradesh, Rep. by Principal Secretary, Home Department, Secretariat, Hyderabad.
2 Director General of Police, Government of Andhra Pradesh, Saifabad, Hyderabad.
3 Station House Officer, Central Crime Station, WCO (Team-III), Police Control Room, Opp: Public Gardens, Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction more in nature of Writ of Mandamus, declaring the action of the respondents in seeking to harass the petitioners and interfere with their legitimate business activities as being wholly illegal and unconstitutional and offend Articles 14, 19 and 21 of the Constitution and consequently direct the respondents herein not to interfere with the legitimate activities of the petitioner's company.

Counsel for the Petitioners: MR.V.HARI HARAN

Counsel for the Respondents.: GP FOR HOME

The Court made the following :

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO.10560 OF 2004

ORDER:

Heard Sri V.Hari Haran, the learned counsel appearing for the petitioner and the learned Government Pleader for Home.

The petitioner herein, which is a Company, files this writ petition, seeking for a writ of Mandamus declaring the action of the respondents herein in interfering with its business activities as being illegal and unconstitutional, being violative of Articles 14, 19 and 21 of the Constitution of India.

The main grievance of the petitioner is that the respondents are erroneously applying the provisions of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (43 of 1978) and thereby tried to interfere with its business. According to the petitioner, the activity of the business would in no way fall within the

parameters of the provisions of the said Act. The petitioner, having registered under the Indian Companies Act on 01.02.2000, is carrying on the business through innovative network schemes and deal in consumer goods. The petitioner's involvement is only as a multi level net work

marketing and chain system of distribution of consumer goods which is a quite popular and unique. Under its scheme, any person interested in carrying on his avocation as an independent distributor of the products of the petitioner-Company, can join the net work and accordingly there is legitimate prorogation of distribution of the products of the petitioner-Company through all such independent distributors. The procedure for being a person becomes a member of such business, subscribing an amount of Rs.3,600/- and all the terms and conditions are prescribed under the Form. The perspective distributor has to buy one product worth 100 point value from one of the petitioner's company and would pay a sum of Rs.600/- towards non-refundable registration fee, thereby, he becomes active distributor and later he has to sponsor two independent distributors as his direct referrals. Each of one gets incentive of Rs.600/- for 20 p.vs. Similarly in case of first direct referral, he would get an additional 30 p.vs. and thereby the chain goes on increasing every distributor. Each point value is worth of Rs.30/-. Thus, the market is push forward and the period of distribution is for a period of one year, which renewable by buying any one of the queerest products worth of 100 p.v. with registration fee of Rs.600/-. The queerests are normally releasing the incentive/bonus to the distributors on 9^{th}, 18^{th}, and 27^{th} of every month after deducting TDS in terms of taxation law. Each distributor is also paid incentive/bonus of direct or indirect sales under this network. Thus, the entire scheme as contemplated thereunder is wholly within the purview of the said Act and it does not attract nor warrant any action under the aforesaid provisions of the Act. Placing reliance on the decisions of the Supreme Court in ***State of West Bengal v. Swapan Kumar Guha*** and ***Reserve Bank of India v. Peerless Co.,*** the learned counsel for the petitioner submits that the scheme initiated by the petitioner is no way different from those which have come up for consideration in the aforesaid decisions and, therefore, on the similar lines and also on the same principles, the Act cannot be applied.

The learned Government Pleader on behalf of the respondents submits that on 28.05.2001 one Sri Karam Ali Khan made a written complaint before Chikkadapally

Police Station, Hyderabad against Sri Koteshwar Rao, Managing Director and another by name Prashant Rao for breach of criminal trust and cheating the others and thereby a crime was registered in Crime No.227/2001 under Sections 406 and 420 of the Indian Penal Code against the accused. During the course of investigation, the provisions of Sections 3, 4 and 5 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 were also added apart from Sections 406 and 420 of IPC. The case was subsequently transferred to Central Crime Station, Hyderabad in June, 2001 and ultimately a charge sheet was also filed thereunder. However, during the investigation, it has come to the notice that the said accused has cheated several persons and it was further stated that having regard to the nature of allegations and transaction, not only the provisions of the aforesaid Act but also the provisions of the Penal Code are attracted and, therefore, they are rightly be invoked. In view of the same, no case has been registered against the 2nd petitioner. Hence, the writ petition is liable to be dismissed.

On consideration of the submissions made from both the sides, the question which arises for consideration is as to whether having regard to the nature of the transaction, there is no business conducted by the petitioner under the aforesaid scheme, whether the provisions of Prized Chits and Money Circulation Schemes (Banning) Act, 1978 are attracted.

The petitioner has narrated the objectives and the nature of scheme and the terms and conditions involved therein which involves the registration of distributors and thereby confirming a chain of supply of goods of the petitioner-Company. On a bare look of the aforesaid scheme and also vis-à-vis the principles laid down by the Apex Court in the aforesaid two decisions no-doubt it cannot be straight away said that the provisions of the Act can be invoked or can be made applicable. The petitioner had in fact approached this Court only on registering a case against him in pursuance of a complaint filed by one person wherein the crime was already at its stage of enquiry and charge sheet has been filed. Therefore, it is not open for this Court to go into the merits of the subject matter therein. However, keeping in view the parameters as laid, both the cases of peerless business and that of the scheme under the earlier money circulation scheme and more so in the absence of any proper facts and circumstances available from both sides attracting in such scheme, it has to be held

that the petitioner's business cannot be said to be falling within the mischief of the aforesaid legislation. Therefore, leaving open for all these aspects to be considered factually and without touching any aspect thereof before the criminal Court where the case is pending in regard to the offence alleged on facts.

The writ petition is accordingly disposed of. No costs.

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B. PRAKASH RAO, J

24th January 2005.

Chvn.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER.

To

1 The Principal Secretary , State of Andhra Pradesh, Home Department, Secretariat, Hyderabad.
2 The Director General of Police, Government of Andhra Pradesh, Saifabad, Hyderabad.
3 Station House Officer, Central Crime Station, WCO (Team-III), Police Control Room, Opp: Public Gardens, Hyderabad.

4 Two C.Cs to the G.P. for Home, High Court Buildings, Hyderabad (OUT).

5 Two C.D. copies.